

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

JACOB DEON FONVILLE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 2:19-cv-01340-KOB-HNJ
	)	
KELLER W. SPEAKS, et al.,	)	
	)	
Defendants.	)	

**MEMORANDUM OPINION**

On January 12, 2021, the magistrate judge filed a report recommending the court grant defendants Speaks and McLemore's motion for summary judgment and dismiss plaintiff's Eighth Amendment excessive force claims with prejudice. (Doc. 25). The magistrate judge found that neither plaintiff's complaint nor his unsworn response to the defendants' motion for summary judgment specifically refute the defendants' sworn affidavits that he charged at them when they entered his cell on March 19, 2019, and repeatedly disobeyed their orders to lie on the floor and, therefore, the defendants' factual allegations were established as true. *Id.* at 8-11. The magistrate judge concluded that, given plaintiff's alleged actions when the defendants entered the cell, the defendants were justified in using some force against plaintiff and the force used was not excessive. *Id.* at 11-14.

On January 28, 2021, plaintiff filed objections to the report and recommendation. (Doc. 26). Plaintiff alleged he “report[ed]” that he did not assault the defendants and he did not have a sheet around his neck when defendant Speaks entered his cell, as Speaks claimed. *Id.* at 1. Plaintiff acknowledged that he “was never able to give a real sworn affidavit” in opposition to the defendants’ motion for summary judgment, but claimed his failure was due to his *pro se* status and having limited access to a law library. *Id.* at 1-2.

The magistrate judge noted that the facts alleged in plaintiff’s objections may create a question of fact whether the force used was constitutional. (Doc. 27 at 2). Therefore, the magistrate judge ordered plaintiff to file an affidavit or declaration within fourteen days concerning his claims that defendants Speaks and McLemore used excessive force against him on March 19, 2019. The magistrate judge advised plaintiff that an affidavit is a statement made under oath before a person authorized to take such an oath, such as a notary public. The magistrate judge further advised plaintiff that if he was unable to make use of a notary public, he must make the statement in writing and include the following declaration pursuant to 28 U.S.C. § 1746: “I declare under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).” *Id.*

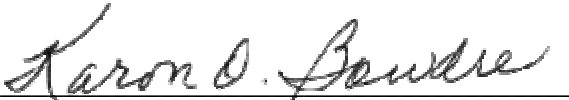
On February 24, 2021, plaintiff moved for a thirty-day extension of time to file an affidavit or declaration. (Doc. 28). On February 26, 2021, the magistrate

judge granted plaintiff's motion in part and ordered him to file the affidavit or declaration within fourteen days. (Doc. 29). More than fourteen days have elapsed, and plaintiff has failed to comply with or otherwise respond to the magistrate judge's order.

Having carefully reviewed and considered *de novo* all the materials in the court file, including the report and recommendation, the court **ADOPTS** the magistrate judge's report and **ACCEPTS** his recommendation. Accordingly, the court finds no genuine issues of material fact exist and defendants Speaks and McLemore's motion for summary judgment is due to be granted.

The court will enter a separate Final Judgment.

DONE and ORDERED this 29<sup>th</sup> day of March, 2021.

  
KARON OWEN BOWDRE  
UNITED STATES DISTRICT JUDGE